

***Mayor's Group Homes Task Force Final Report
February 10, 2005***

Executive Summary

In May, 2004, Lincoln Mayor Coleen Seng commissioned a citizen task force to examine the City's laws and regulations governing group homes and congregate housing. The task presented included evaluating the needs of the City's special populations, the integrity of services, and the stability of neighborhoods.

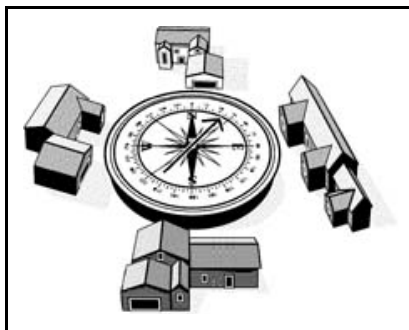
The Task Force gathered input from City and County Staff, service providers, neighbors, and persons with disabilities and their families. The process of finding a balance between all of the interests and concerns of the people who participated was challenging, due to the intensity of the viewpoints expressed. However, we were able to agree on some general statements to define the issues before us.

- Service providers and their residents have asked for greater flexibility within the regulations to allow them to site a residential facility without having to meet the current separation and occupancy limitations.
- Neighbors have expressed concerns over disruptive residents and under-trained staff to manage the facility and its residents, which they argue leads to increased crime and lower property values.
- The effects a group home has on its neighborhood result from the management and operation of the group home, not merely from the home's existence. Homes that are run well and regularly maintained can blend seamlessly into their neighborhoods.
- The City does not provide a well-defined process for persons with disabilities to request a reasonable accommodation from the regulations. The current spacing and occupancy limitations are reasonable, provided there is a mechanism to waive the requirements on a case-by-case basis.
- The State has primary regulatory responsibility over these uses and the authority to encourage improved operation and facility maintenance through licensing.

We have prepared recommendations for the City of Lincoln as well as the State of Nebraska. We feel our recommendations appropriately address the roles of each regulatory body. During our work, we have witnessed an increase in the amount of cooperation and communication between the City and State, and encourage this new dialogue to continue. We believe the partnership evolving between the City and State will strengthen safety and services within the community.

MAYOR'S GROUP HOMES TASK FORCE

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I. Introduction

The Mayor's Group Homes Task Force (Task Force) was asked by Mayor Coleen Seng to examine the City's laws and regulations governing group homes and congregate housing. The task, derived from a Comprehensive Plan requirement and outlined by the Mayor, is to balance the objective of providing effective and efficient services to the City's special populations while protecting the integrity and stability of Lincoln's residential neighborhoods. The Task Force held its first meeting on June 29, 2004, and was asked to complete its work within four months.

The Lincoln/Lancaster County Comprehensive Plan directs the City to "revise the congregate living facility codes in order to provide housing opportunities for residents with special needs throughout the city that are compatible with residential neighborhoods." The Comprehensive Plan goes on to state that congregate facilities should be designed and located to enhance the surrounding neighborhood. Reasonable spacing, design, and operational requirements should be created for all congregate facilities to preserve the neighborhood character while providing for those with special needs.

The City of Lincoln regulates group homes and other congregate living arrangements through several ordinances. The Task Force was asked to focus on the zoning ordinance and recommend any changes necessary to improve the City's ability to provide appropriate housing opportunities for people with special needs. However, any recommended changes also should be compatible with Lincoln's existing neighborhoods.

II. Jurisdiction

The City of Lincoln, through its charter, is empowered to enact zoning ordinances to regulate and restrict the location, height, bulk, and size of buildings and other structures; the density of population; and the locations and uses of buildings, structures, and land for trade, industry, business, residences, and other purposes. These regulations are grounded in the City's police powers, and based upon the promotion of the health, safety, morals, or general welfare of the City. Based on the City Charter, zoning regulations "shall be made with reasonable consideration having been given to, among other things, the character of the various parts of the area zoned and their peculiar suitability for particular uses and types of development, and with a view to conserving property values and encouraging the most appropriate use of land throughout the zoned area." Lincoln's zoning jurisdiction includes the area within three miles of its corporate limits.

In addition to the fundamental limitations on the exercise of police powers, there also may be federal statutory requirements or case law that further addresses local land use controls. Specifically, the regulation of residential land uses as applied to persons with disabilities is addressed in the Fair Housing Amendments Act ("Act") (42 USC §§3601-3631). Since passage of the Act, multiple court cases have attempted to define its provisions in a land use context.

III. Defining the Issues

The Task Force devoted the first several meetings to developing an understanding of the local, state, and federal rules and regulations, as well as, the perspective of state and local officials, service providers, and neighbors. This information was compiled through discussions with the Task Force, and used to frame the land use implications within the context of existing local controls and federal guidelines.

A. Existing Regulations

Generally, residential dwellings in the City of Lincoln fit within one of three categories: single-family, two-family, or multiple-family. Each category is defined by the number of dwelling units it contains; a single-family dwelling has one dwelling unit, a two-family dwelling has two dwelling units, and a multiple-family dwelling has three or more dwelling units. Each dwelling unit is occupied by one family. The use of a structure for residential purposes, then, turns on whether the inhabitants fit within the definition of "family." The Lincoln Municipal Code (LMC) defines family as:

One or more persons immediately related by blood, marriage, or adoption and living as a single housekeeping unit in a dwelling shall constitute a family. A family may include, in addition, not more than two persons who are unrelated for the purpose of this title. The following persons shall be considered related for the purpose of this title:

- (1) A person residing with a family for the purpose of adoption;
 - (2) Not more than six persons under nineteen years of age, residing in a foster home licensed or approved by the State of Nebraska;
 - (3) Not more than four persons nineteen years of age or older residing with a family for the purpose of receiving foster care licensed or approved by the state or its delegate;
 - (4) Any person who is living with a family at the direction of a court.
- (LMC §27.03.220)

Any number of related individuals may reside together as a family, or up to three unrelated individuals may reside together as a family. Individuals, whether disabled or not, meeting the definition of family are not subject to further land use or zoning controls. Using this definition, persons who wish to reside together are distinguished based upon familial status, or relationships. Persons who are unrelated cannot live together as a family in excess of three individuals.

Within the category of unrelated individuals, certain people are afforded some relief from numerical limits on occupancy. Anyone who fits within the definition of group home may apply for a permit allowing up to fifteen unrelated persons to reside together. This requires, first, they meet the definition of group home; and second, they meet the conditions of the permit. A group home is defined as follows:

Group home shall mean a facility in which more than two but less than sixteen persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care, for any of the purposes listed below. Such facility shall be licensed or approved by the State of Nebraska or other appropriate agency.

- (a) Adaptation to living with, or rehabilitation from, the handicaps of physical disability;
- (b) Adaptation to living with, or rehabilitation from, the handicaps of emotional or mental disorder, or mental retardation;
- (c) Rehabilitation from the effects of drug or alcohol abuse;
- (d) Supervision while under a program of alternatives to imprisonment, including but not limited to pre-release, work-release, and probationary programs.

(LMC §27.03.300)

Group homes are permitted in all residential districts through a conditional use permit. This administrative permit is issued by the Building and Safety Department. There are three general conditions, two of which are the same in all residential districts. These two conditions combine to

require the facility to comply with all other applicable zoning and sign requirements, and maintain a current State license. The third condition requires group homes to maintain a separation from one another. The required distance is either one-half mile or 1,200 feet, depending on the district. There is no discretion or public participation in the process. Once an applicant meets the conditions, a permit is issued.

A facility for sixteen or more residents is allowed by special permit as a health care facility, which is allowed in all residential districts and some commercial districts. The definition and permit process for a health care facility generally targets hospital-type service settings, such as nursing care. The public is involved through public hearings, before both the Planning Commission and City Council. Since there are sixteen or more residents, these facilities do not meet the definition of group home.

When the occupancy of a residence changes from single-family to group home, building code requirements may stipulate changes to the dwelling. The Building and Safety Department inspects structures for compliance with adopted building and safety standards. The International Building Code is a city-adopted guideline for building construction, enforced by the City as part of the Lincoln Municipal Code. The Life Safety Code is a State regulation enforced by the State Fire Marshal; when the Building and Safety Department enforces the Life Safety Code, they do so as the local enforcement agent for the State.

The Life Safety Code treats a group home residence with four or more occupants as a “board and care” facility, and places further restrictions on the use. Such restrictions may include greater floor separations, stair separations that include fire-rated wall coverings and doors, and commercial fire sprinkler systems.

B. State Regulation of Group Homes

The State of Nebraska regulates group home facilities through a complex set of state and federal regulations. Constitutional, federal, and state law currently place limits on the state’s authority over group homes and the right of residents to choose to live in a particular group home. In the absence of a commitment order, the selection of residence location is usually the choice of the resident or resident’s legal representative. The owner of the residence also has the right to accept or refuse to accept the resident.

The State has important oversight authority over the operation of some kinds of group homes. Their authority can vary depending upon whether or not a person is receiving services under a State program and whether the services are provided under a developmental disabilities program or a behavioral health program. The State’s authority is exercised through a combination of State licensure laws, State-operated program regulations, federal Medicaid regulations, and funding through provider contracts. There are some individuals and some group homes over which the State has no authority.

Other governmental entities also have some oversight authority relating to individual group homes, including mental health boards, county attorneys, regional behavioral health authorities, and municipal governments. All governmental entities need to collaborate with one another to exercise their oversight authority in a manner consistent with the best interests of the group home residents and the rest of the community.

The behavioral health reform law enacted in 2004 will have an impact on some group homes, both in terms of the number of people living in community settings and additional resources being available to provide services for these residents. Although not all group homes have a connection to behavioral health reform, the recommendations provided in this report should be addressed as part of the behavioral health reform oversight process.

The State of Nebraska, through the Department of Health and Human Services (HHS), regulates a broad category of services under the term Health Care Facility. The HHS term “health care facility” includes centers for the developmentally disabled, mental health centers, assisted living facilities, substance abuse treatment centers, and intermediate care facilities for the mentally retarded. Each category of health care facility has its own set of rules and regulations, as well as requirements for licensure or certification.

One difficulty in discussing group homes in the context of local control versus State licensing requirements is the difference in terminology. The multiple terms used by the State are derived in part from the different service needs of different populations, and also from the different treatment and rights of each population in case law. However, the City historically has defined the list of State facilities under the umbrella term “group home.”

The differences in State treatment and regulation of “health care facilities” has little to do with the local characterization of all facility types as “group homes.” From a land use perspective, they all share essentially the same characteristic, i.e. they are residential facilities.

C. The Backdrop of the Fair Housing Act

Congress passed the Fair Housing Act as part of the Civil Rights Act of 1968. In 1988, Congress expanded coverage of the Fair Housing Act to include handicapped persons through the Fair Housing Amendments Act (“Act”) (both are codified at 42 U.S.C. §§3601-3631).

The Act was enacted to address discrimination in the sale or rental of housing. Section 3604 of the Act makes it unlawful:

- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- (f) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap...or...to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap...

Section 3602 of the Act defines “handicap” as:

- (a) a physical or mental impairment which substantially limits one or more of [a] person’s major life activities,
- (b) a record of having such an impairment, or

- (c) being regarded as having such impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

Within the scope of § 3604(f), handicap relates not only to the person seeking the sale or rental, but also to any person residing in or intending to reside in the dwelling once it is available (§3604(f)(2)(B)), or any person associated with that person (§3604(f)(2)(C)). However, a person is not disabled for purposes of the Act *solely* on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender.

Discrimination, as it applies to municipalities, is defined by §3604(f)(3)(B) of the Act to include:

a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Relative to local land use controls, §3615 also provides:

Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State,...but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

Additionally, §3607(b)(1) states:

Nothing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

As used in the Act, “family” is defined only to include a single individual; and “familial status” means one or more individuals (who have not attained the age of 18 years) domiciled with a parent, person with legal custody, or designee of a parent or legal custodian.

Taken together, these provisions prohibit discrimination by, or a discriminatory effect of, local zoning and land use controls, as applied to persons meeting the Act’s definition of “disability.” According to the *Joint Statement of the Department of Justice and the Department of Housing and Urban Development* (“Joint Statement”), it is unlawful under the Act to:

- Utilize land use policies or action that treat groups of persons with disabilities less favorably than groups of non-disabled persons.
- Take action against, or deny a permit, for a home because of the disability of individuals who live or would live there.
- Refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

The Joint Statement also states that making a determination of whether a request is reasonable must be done on a case-by-case basis; not all requests for accommodations are reasonable.

According to the Joint Statement, “if a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government’s land use and zoning scheme, it is not a ‘reasonable’ accommodation.”

IV. Local Providers: Common Concerns and Perceptions

The Task Force invited local service providers to share their concerns and experiences of using the existing regulatory strategy. Representatives from seven providers accepted the invitation. The number and types of concerns varied depending upon provider and level of services provided.

- **The process for determining if a particular property meets the zoning and building code requirements takes too long.** Providers want to find out if a property meets the spacing requirement quickly, so they know whether it will work for their use. Once a property does, the provider wants to have building code inspections done quickly to determine the scope of necessary improvements. Providers assert the time required to complete the inspections can result in the property being taken off the market and delays the opening of a new group home site.
- **Requiring a group home to make commercial type improvements is unfair when any other family is not required to make similar improvements.** The cost to make required improvements is too high. Often, the provider will lease their residences rather than own them. The property owner is generally unwilling to accept the cost of making the improvements, so providers are caught having to pay for improvements to property they do not own. These requirements are unfair when a home for eight related people is not required to make the same changes as a group home for four unrelated people.
- **Enforcement of building and life safety code requirements has not always been consistent.** A provider gave an example of one property found to meet the requirements, only to have been found out of compliance after a subsequent visit within three months. The providers point to claims of different inspectors applying the same regulations with different results.
- **There is not one City official or office to whom providers can come for assistance with all issues.** Even though several City departments may be involved with different aspects of a group home facility, providers would like a single point of contact for their inquiries.
- **There is no process for providers to request a reasonable accommodation under the Fair Housing Act.** Providers contend the only options available are to seek a variance from the Board of Zoning Appeals or request the City Council to amend the permit requirements. They state these options are too complex and do not provide an adequate remedy, and do not provide the amount of discretion appropriate to their request.
- **The amount of funding available for the services provided is inadequate.** Providers identified two revenue sources: services and lodging. They assert the funding for lodging is insufficient to cover room and board expenses. They blame a lack of sufficient overall funding for causing high staff turnover and leading them to put more occupants in each facility.

- **The State does not always provide enough information about a resident's past disruptive behaviors.** Providing services to residents with high needs can be emotionally and physically difficult. Periodically, providers find themselves housing a person who is too disruptive for their placement. More complete information from the State would help them determine if they should accept a particular resident for placement.
- **The definition of family should allow 4 or 5 handicapped residents per facility.** This would treat handicapped persons more like a traditional family, and lower service costs by removing some regulation. State funding does not support operating a home for only 3 residents. Providers also state a higher occupancy limit will increase staff efficiency.

V. Neighbors: Common Concerns and Perceptions

The Task Force also invited neighborhood representatives to share their experiences living near group home facilities. Several individuals shared information with Planning Department staff outside of the meetings, and several persons attended meetings on different dates.

- **Residents of group home facilities are disruptive and do not care for the neighbor's or neighborhood concerns.** Examples were given of residents causing disturbances late at night, damaging personal property, and being aggressive towards each other, their staff, and neighbors. They are concerned for their children's safety and about the number of police responses. Providers should exercise greater control over their residents.
- **Group home facilities are not maintained as well as other homes in the area.** Staff appear to do little maintenance around the homes, and damage caused by residents may go unrepaired for long periods of time. Neighbors want group homes that are not identifiable from other homes on the block.
- **Neighbors are not notified when a group home plans to open a facility, or are notified after a facility opens.** The neighbors are taken by surprise when they find out a group home has located nearby. They want prior notice and an opportunity to address the proposal before the City approves the location.
- **Some neighborhoods get more than their fair share of facilities.** While they recognize economics and housing costs play a role in siting a facility, they want them spread over the whole city rather than congregated into several specific neighborhoods.
- **When problems occur at a group home, neighbors do not know who to contact.** Neighbors contend providers are difficult to contact and unresponsive to their concerns. They would like to contact someone representing the provider and know the person can and will address the issue. The neighbors also want to be able to contact HHS directly.
- **The Lincoln Police Department responds to group homes too frequently.** Neighbors feel police respond to occurrences at group homes more frequently than other homes in the neighborhood. Providers should be required to better manage incidents at their facilities.

VI. Task Force Findings and Recommendations

Once the Task Force had defined the underlying issues and concerns, a list of findings was prepared to guide the development of recommendations. Since there are two main licensing authorities, the Task Force has presented findings and recommendations for the City of Lincoln and the State of Nebraska. However, while the recommendations to the City of Lincoln identify general concepts as well as detailed changes, recommendations to the State of Nebraska are presented as general concepts and observations.

The charge to the Task Force was to look at existing land use controls and their use in regulating group homes. However, the Task Force concluded that zoning is a relatively blunt tool for addressing the details of a specific land use. The concerns and issues shared with us cannot be adequately addressed through land use controls alone. Therefore, we have provided recommendations that do not just address zoning regulations, but attempt to improve the overall administration of group home services within the community.

The City and State are involved in the process of regulating group home facilities together. Although each has its own set of regulations, they combine to enforce broad public policies and promote the public interest. A facility exceeding the occupancy allowed as a family is unable to operate without approval from both authorities. The City and State should approach this regulatory task in partnership, collaborating to define the most appropriate regulatory strategy.

A. City of Lincoln

This Task Force was primarily created to review and recommend updates to existing City laws and regulations governing group homes and their placement within the city. The primary tool used to regulate group homes by the City of Lincoln is the zoning ordinance. Recognizing there are limitations within the framework of zoning, our recommendations enhance the existing zoning strategy and provide additional flexibility for case-by-case review, while also addressing the relationship between provider, resident, neighbor, and City official.

We believe the primary focus of any changes should address the creation of a reasonable accommodation process. We found that although there were many issues raised during our work, most, if not all, could be addressed and resolved through a case-by-case process rather than by creating new definitions and land uses. The broad spectrum of circumstances surrounding the siting and operation of a group home leads us to conclude any attempt to apply a broad-based regulatory strategy would be ineffective. We feel the most useful change will provide the opportunity for providers to request and receive modifications to the regulations.

The definition of “family”

The Task Force discussed possible changes to the definition of family, including increasing the number of unrelated residents permitted to reside together, and new definitions for related, unrelated, and extended families. Some of the members favored increasing the number of unrelated persons who may reside together. However, the majority of the task force agreed that the current definition of 3 should be maintained. The current definition treats disabled persons exactly the same way as any other person in the community. It also corresponds with the existing State definitions. While there are service providers that assert the need for more than three residents, there are many others who operate successfully with three or fewer residents. In addition, any increase in the number of unrelated individuals who may reside together may have implications beyond group homes.

The main problem with the current definition is the overlap it has with the definition of group home. However, this overlap should be corrected within the definition of group home. We found no other evidence to suggest other changes are necessary. The current definition is also similar to the definition used by municipalities across the country. We recommend the definition of “family” should remain unchanged.

The definition of “group home”

The current definition of group home conflicts with the current definition of family. A group home allows from three to fifteen persons to reside together, while the definition of family allows three unrelated persons to reside together by right. While the City currently interprets group homes to apply to homes for four to fifteen residents, we recommend the definition of “group home” should be revised to remove any overlap with the definition of family.

The definition of group home requires persons who reside together to receive therapy or counseling, but not nursing care, and the home must be licensed by the State. However, we are concerned there may be persons with disabilities who do not require therapy or counseling and therefore fall outside the scope of this definition. The Fair Housing Act applies the term “disabled” to classes of individuals who may not require therapy or counseling, such as individuals with seeing or hearing impairments, or persons recovering from alcoholism or drug addiction. We recommend the definition should be revised to include persons with disabilities who do not require therapy or counseling. The State license language should be revised to indicate the home must be licensed by the State when required.

We also are concerned about dangerous individuals living among vulnerable residents in a group home, and even within residential neighborhoods in general. We have heard safety concerns from neighbors and providers describing residents who may have been placed inappropriately. A group home may serve residents who are dangerous, or whose presenting conditions make them potentially disruptive or aggressive. We recognize there is a legal distinction between persons who are “dangerous,” and exempted from the scope of fair housing laws, and persons who have high service needs, and therefore protected by fair housing laws but who also require more specialized care. While the State is working to develop an assessment system to identify dangerous residents, we encourage it to also identify residents who may be disruptive or aggressive. Once this process is in place, the City should revisit these regulations to determine the appropriate placement of these individuals within the community. We advocate for an additional tier of placement facilities designed to meet the security and behavior needs presented by this specific population.

The current definition of group home also applies to persons who reside together under a program of alternatives to imprisonment, however, it does not apply to children’s homes. These land uses should be evaluated for appropriate treatment within the zoning ordinance. We suggest these uses can be included within the definition of group home, with the same caveat mentioned previously regarding the placement of dangerous or aggressive residents within the community.

The definition of “disabled”

The current zoning ordinance does not define the term disabled, but this term is used by the Act, and we have recommended it be used within the definition of group home. This term should be defined consistent with the definition used in the Act.

The general regulatory strategy for group homes

The current regulatory strategy for group homes contains three tiers, based on occupancy size. The first tier meets the definition of family and does not require City review. The next tier applies to homes for four to fifteen residents, and requires an administrative permit from the City. This tier also requires the homes to maintain separation from one another and provide additional parking. The final tier applies to homes for sixteen or more residents, and requires Planning Commission approval.

We considered changes to different aspects of this general strategy, including changing the separation requirement. We weighed provider concerns over a “shrinking” availability of affordable real estate with neighborhood concerns over the negative effects of group homes. We considered the input of neighbors and advocates who state well-managed group homes can blend well with their neighborhoods. We also reviewed studies that documented the effects of group homes on their surroundings. We conclude the most important factor affecting the compatibility of a group home with its neighborhood is the management and maintenance of the facility. We find these elements would most appropriately be addressed through the contracting and regulatory powers of the State rather than the land use controls of the City.

We acknowledge there may be some benefit in certain cases to have group home facilities located near specific amenities, such as public transportation routes, shopping, and recreation opportunities. However, a majority of task force members also believe separation encourages a more equitable distribution of group homes throughout the city. Providers assert the only reason facilities become concentrated in older neighborhoods is economics; they cannot afford to purchase or lease dwellings in newer developments on the edge of town. However, this economic reality will remain whether a separation is required or not. Most of us feel a reasonable accommodation process is the appropriate method for allowing a facility to locate in close proximity to another. The discussion can then focus on the benefits of a particular location to the residents of the facility, rather than on the economics of the provider. While there are task force members who believe any spacing requirement is inappropriate, the majority recommend the current spacing requirements be retained.

Other requirements for conditional use permits are appropriate, and should also be retained. The requirement that group homes meet all other zoning requirements is a standard provision that generally applies to all types of permits. Recognizing that the State currently requires a license for homes of four or more residents, the current language is consistent with State practices. However, the State is in a position to change its process at any time. The language used for a conditional use permit states a group home will be permitted only so long as it remains validly licensed by the State, which may not always be necessary. Since State licensure is addressed within the proposed definition of group home, the conditional use permit requirement should be revised to be consistent.

Streamlining the regulatory process

We have heard concerns over the amount of time spent by providers to obtain a conditional use permit for a facility of four to fifteen residents. Although the conditional use permit process is administrative, it contains multiple activities. The most time-consuming involve inspections for compliance with building and fire safety codes. However, the time involved inspecting group homes is no greater than the time taken for other residential inspections. We conclude the existing process is fair, and does not unreasonably delay permit approval. Even so, we are concerned that providers do not have the opportunity to find out whether a specific residence meets the spacing requirement without applying for a permit. We recommend this information should be shared with

the public so inquiries can be made and answered in a more timely fashion. We also recommend the City should provide one person to answer building code and zoning questions for providers and the public. In addition, the City should strive to ensure building and fire regulations are enforced consistently among all inspectors.

Creating a reasonable accommodation process

A reasonable accommodation process is necessary to allow group home providers the opportunity to request waivers to specific regulations, and give the City the flexibility to review requests on a case-by-case basis. We believe such a process would provide the flexibility and opportunity for providers to present relevant information about a location that may mitigate waiving a requirement. We also believe such a process would provide a more stable regulatory environment than one in which the regulations continue to change in response to new land-use characteristics.

Requests for reasonable accommodation may stem from any number of existing regulations or unforeseen resident needs. The process should provide a review by the appropriate body having jurisdiction over the subject matter, and be acted upon by the City Council. This would allow review and recommendation by an authority with specific knowledge of the regulations being accommodated. The City Council should have final approval authority, as it does in many other instances.

We did discuss the possibility of granting the Planning Commission approval authority, and concluded there may be some requests over which they have no specific knowledge. We view the Planning Commission as the appropriate reviewing authority for planning and zoning issues, equal to the Building and Safety Department and its appeals boards for building, electrical, plumbing and other codes. The Planning Commission should not be burdened with passing judgement on a recommendation from a reviewing authority we view as being generally equal.

We also discussed the possibility of having an administrative approval for a reasonable accommodation request. This option was appealing to several members, specifically because it would give approval authority directly to a person or department having the most relevant knowledge of the issue. This would also likely provide the shortest review period, and would address the providers who desire a faster process.

However, we continue to believe the public will be interested in whatever processes are developed as a result of this study, and feel a more public process would benefit the City initially. We are also concerned that if approval were granted by an administrative body, the potential for someone to delay the process through appeals would jeopardize the long-term benefits of creating this process. In the long term, if the public becomes satisfied that the reasonable accommodation process is fair and the State regulatory process for group homes is adequate, the City Council could consider making it administrative.

Applicants seeking an accommodation should demonstrate the necessity of the request, including reasons why an alternative solution is not possible. In addition, the request must be reasonable. The Departments of Justice and Housing and Urban Development suggest a two-part test for reasonableness, which we adopt. First, the request should not impose an undue financial or administrative burden on the local government. Second, the request should not create or require a fundamental alteration in the land use and zoning scheme of the local government. We feel this two-pronged test further justifies City Council approval, at least initially, because there will be some

subjectivity required to determine whether a burden is “undue,” and whether an approval is a “fundamental alteration” of Lincoln’s regulatory strategy.

We also recommend that the approval of a reasonable accommodation should run with the applicant, and expire once the applicant no longer operates the facility. A new user of the property should be required to demonstrate their need for a reasonable accommodation. We also feel the public should be involved as under the current notice provisions for public hearings. Should the City Council change the process to administrative at some point in the future, the public notice process will need to be reviewed, since many administrative processes do not involve the public.

Provider interaction with their neighbors

While Lincoln does not generally require applicants and neighbors to meet prior to the filing of an application, it is often strongly recommended. We firmly believe neighbor/provider relations would benefit from their interaction outside of the permit and waiver processes. Neighbors frequently direct their concerns to local officials. Providers should assume the responsibility of addressing concerns raised regarding their facilities. The City permit should require the provider to identify the person whom neighbors and City officials can contact with questions or concerns.

B. State of Nebraska

The primary responsibility for the operation of group homes and for the level of care and supervision of residents lies with the provider. The responsibility for licensing and regulating providers of group home services lies with the State of Nebraska. In addition, the State pays for the overwhelming majority of the group home services, and maintains contracts with providers. The Task Force concluded that the State should be attentive to several key issues.

Training of group home staff

The training providers described for new employees providing services in group homes was brief and basic. While the length and content of the training described may be adequate for entry level employees providing basic care-giving services to most consumers, we became aware of many examples where relatively inexperienced employees with only basic training were put in the position of supervising and serving clients whose presenting problems were quite complex and demanding. For these high-need or high-risk clients, the level of training seemed wholly inadequate. Unlike professions such as correctional officer, where the State maintains and enforces rather detailed certification and curriculum requirements, the training of group home employees is typically short and there is comparatively little State involvement in its design or oversight. Training must be strengthened. Stronger requirements and oversight of training curricula is needed. The frequency with which some group homes rely upon the police to deal with problematic behaviors is an indication that the level of behavior encountered often exceeds the training or preparation of the staff in some settings.

Regulation and oversight

The State needs to improve its ability to monitor provider performance, inspect group homes for compliance with HHS regulations and contracts, and respond effectively to violations or non-compliance. We believe the State must either devote more resources to this effort, or improve its abilities to use its current resources. We believe there are opportunities for the State to develop or improve early warning systems that would allow its limited regulatory resources to be directed towards the group homes that appear to be experiencing problems. Rapid and easy access to information from the Lincoln Police Department is an example of this opportunity, which emerged

and was implemented during the time period the Task Force was working. The State needs to continue efforts to develop an effective means of leveraging this information resource to help it do a better job. Frequent police dispatches are one indicator that problems may exist, and should trigger closer scrutiny to determine the nature of these dispatches, and whether they are indeed indicative of a problem.

Resources for high-needs clients

The State should increase the availability of appropriate placements for developmentally disabled or mentally ill citizens who need a high level of supervision. While we believe more placements for these clients are needed, we also believe better placement decisions by case workers, families, and providers can be made. We repeatedly heard concerns about a small number of clients with serious behavioral issues such as violent, combative, non-compliant behavior that exceeded to capacity of the group home to safely contain and control. In many cases, this resulted in the provider relying upon the police to deal with these most problematic clients. In some cases, the providers' inability to effectively deal with such clients resulted in crimes, including serious assaults that should have been prevented. We encountered some evidence of risky placements being made or accepted in part because of the lack of any better alternative. The State should carefully consider the ability of the provider to serve high needs clients before contracting for such services, and should closely monitor the performance of those providers who are awarded these contracts. The higher risk of these clients coupled with the much greater public expense of serving these clients merits closer surveillance by the State.

Information exchange and dialogue

The process of the Task Force resulted in many useful and insightful exchanges of information between providers, regulators and others. On several occasions, City officials, The Nebraska Health and Human Services System, and providers of group home services exchanged important information during our meetings or in follow-up discussions that were fostered by these meetings. We believe a regular exchange of this nature would be quite valuable and the State, as the primary regulator and contractor, is in an excellent position to be the convener of such an ongoing dialogue.

VII. Conclusion

The Task Force believes the general regulatory strategy used by the City of Lincoln is appropriate and works well in most cases. There are instances where additional flexibility should be available, and a process needs to be developed to address those instances. Additional minor revisions will address existing inconsistencies between the definitions of family and group home.

The State of Nebraska has a role to play in the regulation of group homes as well. While the Task Force has primarily focused on land use tools, there are issues of compatibility that are most appropriately addressed through State regulations rather than local land use controls. The Task Force has identified those points with the intention of joining the State in an ongoing partnership to address common issues relating to group homes.